IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

CARLOS E. GUTIERREZ   PLAINTIFF

v.   Civil No. 05-5083

CORPORAL WESLEY KERN   DEFENDANT

ORDER

On May 16, 2006, an evidentiary hearing was held in this case. (Doc. 33). On June 8,

2006, a notice of the death of the defendant was filed by defendant's counsel. (Doc. 34). The

notice indicates the defendant Wesley Kern was killed in an automobile accident.

By order entered on June 12, 2006 (Doc. 35), plaintiff was given until July 7, 2006, to file

a motion to substitute the administrator of Kern's estate pursuant to Rule 25 of the Federal Rules

of Civil Procedure. On June 28, 2006, plaintiff filed a motion for clarification of the court's order

and for an extension of time to file the motion to substitute if it becomes necessary to do so (Doc.

36).

On June 29, 2006, an order was entered (Doc. 37) granting plaintiff's request for an

extension of time and his motion for clarification. Relevant case law discussing the distinction

between official capacity and individual capacity claims was contained in the order. Plaintiff

was given until July 24, 2006, to advise the court whether he intended to proceed with an official

capacity claim against Kern only, in which case the claim would be the equivalent of a claim

against Washington County, or an individual capacity claim, in which case Kern would be

personally held liable, or both types of claims. Plaintiff was informed that if he intended to hold

Kern personally liable, a motion to substitute Kern's estate would have to be filed.

On July 10, 2006, plaintiff filed a response to the court's order (Doc. 38). In his response, plaintiff states he would like to proceed with an official capacity claim against Corporal Wesley Kern and Washington County. Accordingly, **the clerk is directed to note on the docket sheet that the defendant is sued in his official capacity only.**

IT IS SO ORDERED this 12th day of July 2006.

/s/ Beverly Stites Jones
UNITED STATES MAGISTRATE JUDGE